IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03/12/2003

CORAM

THE HONOURABLE MR. JUSTICE V.S.SIRPURKAR
AND
THE HONOURABLE MR. JUSTICE N.KANNADASAN

WRIT APPEAL NO.491 of 1999 and WRIT APPEAL NO. 492 of 1999
and
CMP Nos.4933 and 4944 of 1999

The Executive Engineer and
Administrative Officer,
Tamilnadu Housing Board,
Vellore Housing Unit,
Sathuvancheri, Vellore-9. .. Appellant in both Appeals

-Vs-

S.Govindaraj .. 1st respondent in WA 491/1999

Shantha .. 1st respondent in WA 492/1999

The Government of Tamilnadu
rep., by its Secretary, Housing
and Urban Development Department,
Fort St. George, Madras-9. .. 2nd respondent in both Appeals

The Special Tahsildar,
(Land Acquisition),
Housing Scheme, Ranipet,
North Arcot District. .. 3rd respondent in both Appeals

These writ appeals are preferred against the order of this
Court dated 1.9.1998 in W.P.Nos.5748 and 5749 of 1989 made in a common order
in W.P.Nos.5747 to 5749 of 1989.

!For Appellant in both Appeals: Mr.D.Veerasekaran

^For Respondent-1 in both
Appeals : Mr.V.Raghavachari

For Respondents-2&3 in : Mr.D.Krishnakumar,
both Appeals Special Govt. Pleader.
Assisted by R.Vijayakumar,

Govt. Advocate.

:COMMON JUDGMENT

N. KANNADASAN, J.

These appeals are filed by the Tamil Nadu Housing Board challenging the common order passed by the learned single Judge in W.P.Nos.5748 and 5749 of 1989 dated 1.9.1998. The writ petitions were filed by the land owners challenging the Land Acquisition Proceedings wherein the appellant/Tamil Nadu Housing Board was impleaded as third respondent. The writ petitioners have primarily contended that the mandatory requirements of Rule 3 (b) of the Tamil Nadu Land Acquisition (Tamil Nadu) Rules (hereinafter referred to as the Rules) have not been complied with and as such the enquiry under Section 5-A of the Land Acquisition Act is vitiated and the authorities have not chosen to notify the names of the land owners/petitioners in the notification under Section 4 (1) of the land acquisition Act viz., G.O.Ms.No.165 Housing and Urban Development Department dated 3.2.1986, even though the land owners have purchased the properties in question in the year 1984 and 1985 respectively.

2. Per contra, the Government has filed its counter-affidavit and contended that all the formalities required under the Act and Rules were followed and the proceedings are valid and sustainable in law.

3. The learned Judge by order dated 1.9.1998 has allowed the writ petition on the ground that Rule-3 (b) of the Tamil Nadu Rules have been violated and as such, the enquiry under Section 5-A has been vitiated since they were not informed the comments of the acquiring body regarding the objections raised by them.

4. Against the said order of the learned Judge, the Tamil Nadu Housing Board viz., the requisition body has filed the above appeals.

5. It is contended on behalf of the appellant/Housing Board that the order of the learned Judge is unsustainable in law for the following reasons. The name of the first respondent in W.A.No.491 of 1999/ petitioner in W.P.No.5748 of 1989 does not find a place in the revenue records though he has purchased the land in question as early as on 25 .10.1984 and as such, his name could not be furnished in the 4(1) notification dated 3.2.1986. Apart from the publication of notification under Section 4(1) of the Act in the official gazette, it was published in two dailies which is widely circulated viz., "The Hindu" and " Thinathanthi" on 13.3.1986. The said notification was also published at convenient places in the locality on 15.3.1986, setting out the details of the lands and the acquisition proposals. A fresh enquiry was ordered under Section 5-A of the Act and he has appeared and submitted his objections only on 9.5.1986 and 20.2.1987 and his objections were overruled. Further the mandatory requirements of Rule 3(b) and the 5-A enquiry under the Land Acquisition Act were complied with and the notification under Section 6 of the Act was issued and an award enquiry was conducted and the possession of the land was taken over by the

Government and later on the same was handed over to the requisition body namely, the Tamil Nadu Housing Board/appellant herein as early as on 10.4.1989. As regards the first respondent in W.A.No.492 of 1999/petitioner in W.P.No.5749 of 1989, the name of the writ petitioner could not be included in the 4(1) notification dated 3.2.1986, since her name does not find a place in the revenue records, even though she had purchased the lands as early as on 6.12.1985. Apart from the publication of notification under Section 4(1) of the Act in the official gazette, it was published in two dailies which is widely circulated viz., "The Hindu" and "Thinathanthi" on 13.3.1986. The said notification was also published at convenient places in the locality on 15.3.1986, setting out the details of the lands and the acquisition proposals. However, in the instant case, she has appeared for 5-A enquiry and has raised her objection only on 20.2.1987 which was considered and overruled. The mandatory requirements of Rule 3(b) and the enquiry under Section 5-A of the Act were complied with and the notification under Section 6 was issued, an award enquiry was also conducted and the award was passed and possession of the land was taken over by the Government and the same was handed over to the Tamil Nadu Housing Board/appellant on 10.4.1989. The only objection said to have been raised by the writ petitioners was to the effect that their lands can be exempted from the acquisition proceedings and they have not chosen to raise any other valid objections.

6. The appellant has further contended that in as much as Section 5 -A of the Land Acquisition Act specifically provides a time limit for the land owners to submit their objections within 30 days from the date of publication of the notification, admittedly, the writ petitioners having submitted their objections beyond the prescribed period of 30 days, they are not entitled to take advantage of the Rule 3(b) of the Rules.

7. On behalf of the first respondent in both the appeals/writ petitioners, the following contentions were urged viz.,
a. The appeals themselves are not maintainable in law in view of the fact that the appeals are filed only by the requisition body viz., the Tamil Nadu Housing Board and not by the acquisition body viz., the Government.

b. The mandatory requirement of Rule 3(b) was not followed and as such, the enquiry under Section 5-A of the Land Acquisition Act is vitiated and it cannot be suggested that theland owners cannot avail the right which flows from Rule 3(b) on the ground that they have not submitted their objections within a period of 30 days from the date of notification under Section 4(1) of the Act, since the names of the land owners do not find a place in the said notification.

c. The fact of taking over the possession of lands cannot be given due weightage in as much as the possession might have been taken only symbolically and the land owners are still in possession of their respectful lands, and as such they are entitled to challenge the acquisition.

8. We have considered the rival contentions made by both sides.

9. As regards to the question of maintainability of the above writ appeals filed by the requisition body, learned counsel for the first respondent in both the appeals/writ petitioners has urged that the Supreme Court in its judgment rendered in The Municipal Corporation of the City of Ahmedabad vs. Chandulal Shamaldas Patel and Others reported in 1971 (3) SCC 821 has held that the beneficiary viz., the requisition body is not entitled to maintain any appeal in the absence of an appeal filed by the acquisition body. The above contention is not acceptable to us in the light of various pronouncements of the Honourable Supreme Court on the said point. It is to be seen that the Honourable Supreme Court in its judgment rendered in Himalaya Tiles and Marble (P) Ltd vs. F.V.Coutinho reported in AIR 1980 SC 1118 has held that the beneficiary viz., the requisition body would come within the definition of "Person interested" as defined in Section 3(b) of the Land Acquisition Act. The Supreme Court further proceeds to the effect that the expression "Person interested" is very comprehensive and it does not profess to give an exhaustive definition and a liberal interpretation has to be given to the said expression. In fact, while upholding the right of the requisitioning body to file an appeal, in Para-13 of the said judgment, the following observation is made:

"Thus, the preponderance of judicial opinion seems to favour the view that the definition of 'Person interested' must be liberally construed so as to include a body, local authority, or a company for whose benefit the land is acquired and who is bound under an agreement to pay the compensation. In our opinion, this view accords with the principles of equity, justice and good conscience. How can it be said that a person for whose benefit the land is acquired and who is to pay the compensation is not a person interested even though its stake may be extremely vital? For instance, the land acquisition proceedings may be held to be invalid and thus a person concerned is completely deprived of the benefit which is proposed to be given to him. Similarly, if such a person is not heard by the Collector or a Court, he may have to pay a very heavy compensation which, in case he is allowed to appear before a Court, he could have satisfied it that the compensation was far too heavy having regard to the nature and extent of the land"

10. The view expressed in the above said judgment has again been reiterated by the Constitution Bench of the Supreme Court in its judgment rendered in U.P. Awas Evam Vikas Parishad vs. Gyan Devi reported in (1995) 2 SCC 326. In the above decision, it has been specifically held therein that the learned Judges were unable to endorse the view taken earlier in its decision rendered in The Municipal Corporation of the City of Ahmedabad's case. The Supreme Court while dealing with the question of maintainability of an appeal by the requisition body has taken note of the specific provisions of Section 3(b) of the Land Acquisition Act which defines about the "Person interested" and as well the enabling provision viz., Section 50(2) of the said Act which proceeds to the effect that the requisition body may appear and adduce evidence for the purpose of

determining the amount of compensation and upheld the right of appeal by the requisition body. The Supreme Court has also taken the similar view in an another case viz., M/s. Neyvely Lignite Corporation Ltd. vs. Special Tahsildar (Land Acquisition), Neyvely reported in AIR 1995 SC 1004 and it is held therein that liberal interpretation has to be given to the term 'Person interested' as found under Section 3(b) of the Land Acquisition Act which is only an inclusive definition. The above proposition of law is taken note of by the Division Bench of this Court in its judgment rendered in Chief Executive Officer, CMDA, Egmore vs. Sakunthala and Others reported in 2000 Writ L.R. 779. In the said decision, it is held that the requisition body, on whose behalf the land acquisition was initiated for the purpose of widening the road is definitely an aggrieved person and as such it is entitled to file an appeal and the same is maintainable. Though the counsel for the writ petitioners has made an attempt to advance an argument to the effect that the above judgment can be made applicable only in cases wherever the requisition body files an appeal challenging the award of compensation, the said argument is not acceptable to us. In fact, the Supreme Court while rendering the judgment in Himalaya Tiles and Marble (P) Ltd's case was conscious of the fact that the requisition body has to be treated as a person aggrieved on two counts viz., if the land acquisition proceedings is held to be invalid, the person concerned is completely deprived of the benefits which is proposed to be given to him and if the said person is not heard by the Collector or Court, he may have to pay a heavy compensation (The emphasis is supplied by us).

11. As regards to the contention of the violation of Rule 3(b) and Section 5-A enquiry is concerned, the relevant provision of Section 5 -A of the Act is extracted hereunder for better appreciation of law:-
"5-A. Hearing of Objections--(1) Any person interested in any land which has been notified under Section 4, sub-section (1), as being needed or likely to be needed for a public purpose or for a Company may, within thirty days from the date of the publication of the notification, object to the acquisition of the land or of any land in the locality, as the case may be".

12. A plain reading of the above provision makes it clear that the Act itself provides the period of limitation of 30 days from the date of the publication of the 4(1) notification. We have seen the records carefully. It is suggested therefrom that after the petitioner were given notice of the land acquisition, they have not raised the objection within 30 days. It cannot be countenanced that they were given no notice at all because had that been so they would never have been able to file any objection. Since the objections were not filed within time there would be no question of infraction of Rule 3(b), only because those comments of the acquiring body were not informed to them. It is true that the Land Acquisition Act is expropriatory when a person's lands are sought to be acquired, necessary safeguards envisaged in the Act have to be followed and the land owners should have their opportunity to oppose the said acquisition proceedings. When such safeguards are provided to the land owners, it is equally for the land owners to adhere strictly to the statutory time limit in raising such objections. Hence, if the objections are not submitted within

the prescribed statutory time limit, the land owners cannot take recourse to the violation of Rule 3(b) of the Rules. The above proposition of law is supported by the Division Bench of this Honourable Court in its decisions viz., Chief Executive Officer, CMDA, Egmore vs. Sakunthala and Others, 2000 Writ L.R. 779; and Velusamy vs. Government of Tamilnadu, 2000 CTC (I) 530.

13. Even though the writ petitioners appear to have purchased the lands during the years 1984 and 1985, they have not chosen to take necessary care to effect the change of mutation in the revenue records. The Collector or any such authority discharging the functions of the Collector under Section 5-A of the Act is not obliged to make a roving enquiry about the ownership of the land viz., to find out from the Registration Office if the land had already been sold by the recorded land owners. The authorities are justified in relying upon the official record viz., the revenue records as to who are the owners of the land sought to be acquired and prudence did not require any further enquiry to be made. The above view is supported by the decision of the Supreme Court rendered in W.B. Housing Board vs. Brijendra Prasad Gupta reported in (1997) 6 SCC 207. The Full Bench of this Court in P.C.Thanikavelu vs. Special Deputy Collector, L.A. Madras (1989 WLR 8 9 = AIR 1989 MADRAS 222) has held that the persons who have not taken necessary steps for mutation of revenue records at appropriate time cannot complain any error or infirmity in the acquisition proceedings. Admittedly, in the case on hand, the names of the owners of the land as found in the revenue records were shown in the 4(1) notification which is in accordance with law. As mentioned in the foregoing paragraphs, wide publicity was given with regard to the proposed acquisition viz., publication of the notification under Section 4(1) of the Act in the official gazette; publication in two leading dailies viz., "The Hindu" and "Thinathanthi" and publication at convenient places in the locality. In the absence of any plea raised by the writ petitioners that the above publications were not effected, it cannot be contended that the land owners did not have the sufficient knowledge about the acquisition and they are deprived of the opportunity of raising objections within the statutory period.

14. As regards to the next contention viz., taking over the possession of the land is concerned, it is categorically contended by the Appellant/Housing Board that the possession of the lands were already taken over by the Government and the same were handed over to the Housing Board and as such, the land vest with the Department and hence the writ petitioners are not entitled to challenge the acquisition proceedings. To countenance the above contention, counsel for the writ petitioners though submits that the Government has taken "symbolic possession" and actual possession was not taken, the said argument was not supported by any materials on record. The Supreme Court in its judgment rendered in B.N.Bhagde vs. M.D.Bhagwat reported in AIR 1975 SC 1767 has observed in Para-28 observed as follows:-

"When a public notice is published at a convenient place or near the land to be taken stating that the Government intends to take possession of the land, then ordinarily and generally there would be no question of resisting or impeding the taking of possession. Delivery or giving of possession by the owner or the occupant of the land is not required. The Collector can enforce the surrender of the land to himself

under Section 47 of the Act if impeded in taking possession"
... ...
"The presence of the owner or the occupant of the land to effectuate the taking of possession is not necessary. No further notice beyond that under Section 9(1) of the Act is required. When possession has been taken, the owner or the occupant of the land is dispossessed. Once possession has been taken the land vests in the Government".

15. The Supreme Court in its judgment rendered in State of Punjab vs. Sadhuram reported in (1997) 9 SCC 544 has held that after taking possession of the land, by operation of Section 16 of the Act, the right, title and interest of the erstwhile owners should extinguish and the Government became absolute owner of the property free from all encumbrances. Under the said circumstances, it is not open to the writ petitioners to challenge the acquisition proceedings after the land vest with the Government.

16. For the above mentioned reasons, the order of the learned Judge is set aside and the appeals are allowed, however, there will be no order as to costs. Consequently, connected CMPs are closed.

Index : Yes.
Internet : Yes.
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To

1. The Secretary,
Government of Tamilnadu
Housing and Urban Development Department,
Fort St. George, Madras-9.

2. The Special Tahsildar,
(Land Acquisition),
Housing Scheme, Ranipet,
North Arcot District.

3. The Executive Engineer and
Administrative Officer,
Tamilnadu Housing Board,
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